

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

DAVID BUTLER,

Plaintiff,

vs.

Civil Action 2:10-CV-804  
Judge Holschuh  
Magistrate Judge King

DEPARTMENT OF REHABILITATION  
AND CORR.,

Defendant.

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner, brings this action under 42 U.S.C. §1983 alleging that his rights under the Constitution of the United States were violated when he was placed in close proximity to an inmate infected with tuberculosis, resulting in plaintiff's exposure to the disease. The *Complaint* seeks monetary damages. This matter is now before the Court for the initial screen of the *Complaint* required by 28 U.S.C. §§1915(e), 1915A.

The only defendant named in the *Complaint* is a state agency. This defendant is not a "person" subject to suit under §1983. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 70-71 (1989); *Wolfel v. Morris*, 972 F.2d 712, 718 (6<sup>th</sup> Cir. 1992). Moreover, this defendant is absolutely immune from suit in this Court by virtue of the Eleventh Amendment to the United States Constitution. *See Welch v. Texas Dep't of Highways and Pub. Transp.*, 483 U.S. 468, 472-73 (1987).

It is therefore **RECOMMENDED** that this action be dismissed for lack of subject matter jurisdiction.

If any party seeks review by the District Judge of this *Report and Recommendation*, that party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation*, specifically designating this *Report and Recommendation*, and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation*. See *Thomas v. Arn*, 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.*, 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

September 9, 2010  
(Date)

s/Norah McCann King  
Norah M'Cann King  
United States Magistrate Judge